



FAIR PRACTICES
ADVOCATE

2012 ANNUAL REPORT

An independent office working to ensure fair practices at
the Workers Compensation Board of Manitoba

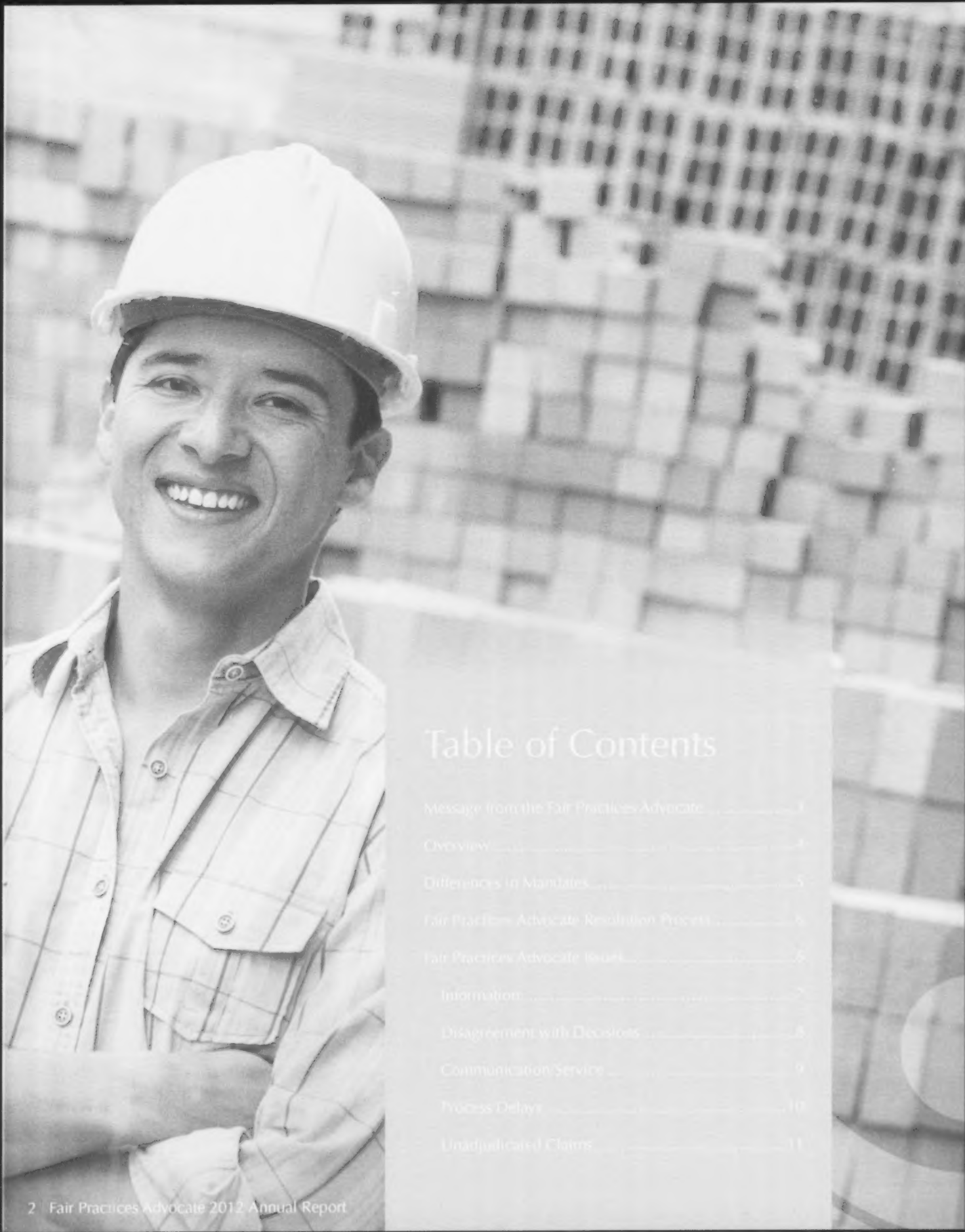


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Message from the Fair Practices Advocate

At its essence, this annual report is a summary of a year of talking with and listening to people: injured workers, employers and WCB staff.

When we talk with injured workers, we often become familiar with the most intimate details of their lives. We see how an injury can affect not only whether they can work and live a full life outside of work, but also how it affects their relationships with their families, their employers, their community, and themselves.

Some employers' stories are equally poignant. They may be struggling to keep their business afloat and are worried about the impact of an increased assessment after an employee's injury.

It is our privilege to be admitted into their lives for a brief period. At year's end, we remember them and reflect on the extent to which we were able to help and think about how we can improve our service in the year to come.

Although the office of the Fair Practices Advocate is independent, our direct efforts with workers and employers and the feedback we provide to the WCB supports the organization as it strives to make life better for injured workers, their families and our collective community.

I feel fortunate that my assistant Sandra Payette and I have had the opportunity to lend our ear and support to injured workers and employers across the province. We've seen the exponential impact that workplace injuries can have, both personally and organizationally. Through our experiences, the integral role that our office plays - whether it's resolving a long-standing issue or simply listening when no one else will - is clear.

To more effectively capture the essence of the office of the Fair Practices Advocate, we've recently developed a new visual identity that we're unveiling in this year's annual report. We believe this new look:

- captures our role as an organizational ombudsman for the WCB of Manitoba, and
- graphically expresses our independence, our professionalism, our willingness to listen, our desire to understand, and our sincere efforts to ensure fair practices and facilitate the resolution of problems.

Although the look is new, the office of the Fair Practices Advocate operates as it has since it was established nearly 25 years ago: we continue to welcome workers, their dependents and employers to contact us with any concerns about decisions or services received from the WCB. Our goal is to provide timely and quality assistance in the true spirit of fairness.

Deana Martz
Fair Practices Advocate

When we talk with injured workers, we often become familiar with the most intimate details of their lives.

Overview

The Fair Practices Advocate is an organizational ombudsman for the Workers Compensation Board of Manitoba.

The Fair Practices Advocate:

- listens to the concerns raised by injured workers, their dependents, and employers
- pursues the resolution of issues brought forward
- identifies recurring fair practices issues and reports them to the WCB.

Three main principles guide the work of the Fair Practices Advocate:

- **Impartiality** - The Fair Practices Advocate reviews all issues impartially and makes recommendations that promote fair practice.
- **Confidentiality** - All inquiries received by the Fair Practices Advocate are confidential, unless an intervention is requested.
- **Independence** - The Fair Practices Advocate serves injured workers, employers, and the WCB, but works independently in the interest of fairness.

The Meaning of Fairness

Although only four letters long, the word "fair" has many meanings and nuances. When we think of fairness in our personal lives, we often use the term "fair" when we may mean "fortunate". An event

that has a negative impact on our life is indeed unfortunate or not "fair", in that sense of the word.

At the office of the Fair Practices Advocate, when we consider whether a decision or action is fair, we consider many factors, including:

- The **process** – was there a thorough investigation of the facts, are the facts upon which a decision was based documented on the claim file, was the decision maker impartial and open-minded, and did the decision maker appropriately exercise discretion?
- The **decision** – is the decision supported by the facts, are there clear reasons for a decision, is the decision in accord with legislation, policies, guidelines and acknowledged practices, does the decision demonstrate that the decision maker considered all the facts and issues, and does the decision explain why the decision maker reached that particular decision?
- The **communication** – was the worker or employer treated with respect and courtesy, was the WCB staff person willing to listen, were phone calls returned and were questions fully answered?

After a thorough investigation, we may then determine whether a WCB decision or action was "fair", although it may be unfortunate for the person affected by the decision or action.

Impartial | Confidential | Independent

Differences in Mandates

Fair Practices Advocate, Review Office, Appeal Commission

The Fair Practices Advocate and the appeal mandates of the Review Office and Appeal Commission complement rather than duplicate one another. This is reflected in two differences in their respective mandates:

Range of Issues

Many of the issues brought to the Fair Practices Advocate lie outside of appeal mandates, such as the timeliness of adjudication and processing of benefits, courtesy and communication, and the need for apology when things have gone wrong.

Authority to Make Recommendations vs. Changing Decisions

The Review Office and the Appeal Commission each have the authority to change a decision if they conclude that the weight of the evidence, based on a balance of probabilities, does not support the original decision made by a WCB adjudicator or case manager.

The Fair Practices Advocate's mandate is narrower; it is restricted to making recommendations for change.

Recommendations to change decisions are made only if the decision or action of the WCB is determined to be:

- clearly wrong – a decision that clearly departs from policy, process or procedure, or
- clearly unreasonable – a decision where there is no obvious relationship to the facts, that results from a refusal to exercise discretion where the facts call for its exercise, that cannot be rationally explained or that is inconsistent with other decisions with similar circumstances.

This is a more stringent test than would be applied to the same issues through the appeals process.

The Fair Practices Advocate can also recommend further investigation if there is a lack of relevant information or if there is contradictory information that has not been clarified.

Fair Practices Advocate Resolution Process

When we receive complaints or inquiries, we typically use the following process to seek resolution of issues:

1. If a caller has not already done so, we encourage the caller, where appropriate, to address the issue with the WCB staff person most directly responsible for the issue.

2. If the issue is left with the Fair Practices Advocate, we assess it to determine if there is a fairness issue to be addressed. Depending on the issue, we may consider the following questions to make this determination:

- Is there an issue of timeliness that can be addressed?
- Is there a communication issue that needs to be resolved?
- Does the caller require more information to understand WCB processes and policies?
- Was the claim investigated adequately?
- Did the caller have an opportunity to make their case and be heard by the decision maker?
- Is there a reasonable and logical connection between the facts of the case and the decision reached?
- Was the rationale for the decision clearly explained?
- Is the decision consistent with WCB legislation and policy?
- If a mistake was made, was it acknowledged and, when possible, corrected?
- Did the WCB respond fairly and respectfully if the caller felt poorly treated?

3. If the Fair Practices Advocate determines that no fairness issue is involved, we will explain this to the caller.

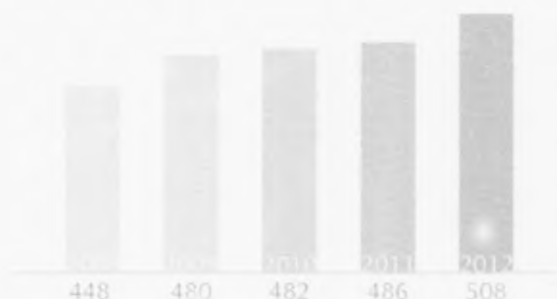
4. If there is a fairness issue that requires further investigation or action, the Advocate contacts WCB management to discuss steps to resolve the issue. If the issue remains unaddressed, the Advocate will approach senior management to discuss options for resolution.

5. The Fair Practices Advocate contacts the caller with the results. Depending on the circumstances, results might include a change in decision, further investigation, an apology, or the clarification of reasons for a decision.

Fair Practices Advocate Issues

Injured workers and employers contact the Fair Practices Advocate with a variety of concerns and issues. In 2012, there were 508 issues raised.

**TOTAL NUMBER OF ISSUES RAISED
2008 - 2012**



For reporting purposes, we group the issues into five general categories:

1. Information
2. Disagreement with Decisions
3. Communication/Service
4. Process Delays
5. Unadjudicated Claims

The five groups are described on the following pages, with examples of actual issues brought forward in the past year.

Information

This category relates to requests for information about any of the following three areas of concern:

- Policies, procedures, and legislation – Callers request an explanation or confirmation of what they were told by WCB staff about the content or interpretation of WCB policies and procedures or *The Workers Compensation Act*.
- Status of claim – Callers want to know how some aspect of their claim is proceeding.
- Referrals – Callers seek information or assistance that the Fair Practices Advocate cannot provide, but can be provided by a different office of the WCB or by an external organization.

INFORMATION ISSUES

2008 - 2012



Examples of this Issue

- A worker was concerned because his employer had received a copy of a letter before he did. As a result, he suspected that there was some “coziness” between the WCB and his employer. A review of the file showed that the employer’s copy had been faxed while the worker’s had been mailed, accounting for the delay.
- A worker asked that the Fair Practices Advocate attend a meeting with him, his case manager and a WCB health care consultant. We explained to the worker that attending such a meeting was not within our mandate but that he was free to bring a friend or family member with him.
- A worker was concerned about the care he’d received from his surgeon. We explained that this was outside of our mandate and suggested he contact the College of Physicians and Surgeons.
- An employer reported that while waiting to be interviewed, a job applicant began assisting an employee and was hurt. The employer was concerned that the incident would affect the workplace’s experience rating. We provided the employer with information on the WCB’s definition of “worker.”

Disagreement with Decisions

This category deals with disagreements over WCB decisions on claims or benefits. The Fair Practices Advocate addresses this issue when either the decision is clearly wrong or clearly unreasonable, or when the investigation has been insufficient to support the decision.

In 2012, we received 174 disagreements with decision. After we reviewed the complaints, we made recommendations for further investigation or found the decision to be clearly wrong or unreasonable in approximately 18 per cent of the complaints; we made no recommendations on the remaining 82 per cent.

DISAGREEMENT WITH DECISIONS 2008 - 2012



An Example of this Issue

A worker was facing surgery as a result of an injury at work. When he filed his claim, he advised the WCB that he'd started working for his employer nine years ago. However, he had been on leave for the last two years and had only been back at work for two months when he was hurt. Initially, his wage loss benefits were based on two months of earnings, resulting in a weekly benefit rate of \$344.76. As in all claims, after 12 weeks, the worker's average yearly earnings were calculated and used to review his benefit rate. Average yearly earnings are usually based on any consecutive 12-month period in the one to two years before the compensable injury. Because this worker had only worked for two months, and had negligible income for two years prior, his average yearly earnings reduced his benefit rate to \$93.23 per week. The worker called the Fair Practices Advocate.

We told the worker that the average earnings policy allowed the WCB to consider his income over the last five years to determine an accurate reflection of his earnings. We advised him that if, as he'd told us, he had not worked for two years due to illness, he could ask his case manager to consider his income in the last five years, rather than the last two. The worker did this and, as a result, his weekly benefit rate was recalculated to \$296.86. The worker received an adjustment of past wage loss benefits of more than \$2,000.

Communication/Service

Communication/Service issues relate to dissatisfaction with the service or communication provided by WCB staff. Typical examples may include unclear communication, difficulty in contacting staff and in having calls returned, lack of appropriate management of a case, or communication that the caller perceived as being disrespectful or unprofessional.

COMMUNICATION/SERVICE ISSUES 2008 - 2012



Examples of this Issue

- A worker had a well-established pattern of occasionally leaving work early due to pain from an ongoing wrist problem. Her case manager paid her wage loss benefits for these absences. A new case manager was assigned who had a different practice: wage loss benefits would not be paid unless the worker presented a note from her doctor for each absence. The case manager told her to go to a walk-in clinic if she could not see her own doctor.

The worker thought that this was an unreasonable demand and called us. We contacted the manager to recommend that the case manager look at all the circumstances, including the well-established pattern of absences, to determine whether the worker's inability to work was due to pain. The manager told us his practice was that a doctor's note was required to pay wage loss. As our opinion was that this practice was not in accord with any legislation or policy, we contacted the director who confirmed the manager was mistaken. The case manager was directed to consider all of the circumstances, including the fact that the worker had regular appointments with her doctor and that the reports from those appointments supported the ongoing problem and occasional absence from work due to pain.

- A claimant was suspicious that he was under surveillance when an unknown person appeared in his small rural community and began asking about him. When the claimant called his case manager to ask if there was surveillance, the case manager denied the surveillance. The claimant called us for confirmation. We determined that he was in fact being surveilled and told him that the WCB protocol required any WCB investigator approached by the subject of surveillance to confirm the surveillance and then cease it. Furthermore, if case managers are unaware whether a claimant is being surveilled, they are to refer claimants to the WCB's Special Investigations Unit, who will then confirm or deny the surveillance.

Process Delays

This category involves injured workers and employers who feel that the WCB has taken longer than acceptable to deal with an issue.

The range of issues addressed by the Fair Practices Advocate under this category includes delays in issuing benefits after acceptance of a claim, delays in obtaining medical opinions from the WCB's Healthcare department, delays in decisions on medical aid, and delays in the implementation of a decision by the Review Office or the Appeal Commission.

PROCESS DELAY ISSUES 2008 - 2012



An Example of this Issue

A worker had successfully pursued her claim through several appeals, and after a four year process, her claim was allowed by the Appeal Commission. Soon afterwards, the WCB requested information needed to calculate the four years of wage loss benefits owed to her. Two months later, they asked her to provide a release so that the Canada Revenue Agency would release her income tax returns to the WCB. This, of course, would result in a further delay in receiving her benefits.

That's when the worker called us. She told us that when she asked for the release to be faxed to her to save time, her case manager refused and insisted on mailing it instead. She was frustrated and questioned why the release hadn't been asked for initially and why it couldn't be faxed to her. She also asked for an advance on the money owed to her.

We spoke to the manager on her behalf, which resulted in the release being faxed to the worker. She signed it and promptly faxed it back. The manager and case manager then consulted with a payment assessor and based on the information on file, determined that an advance of \$20,000 could be paid to the worker without any risk of overpayment. Paying an advance while the exact amount of compensation is calculated is an accepted practice at the WCB, particularly when a worker has been waiting an extended amount of time for payment. Three days after calling us, the worker received an advance of \$20,000.

Unadjudicated Claims

This category of issues involves claims on which no initial decision has been made to accept or deny the claim. Delays can result from both internal factors and external factors, such as waiting for reports from healthcare providers.

UNADJUDICATED CLAIMS ISSUES 2008 - 2012



An Example of this Issue

A worker called the FPO after waiting five weeks for a decision on whether the WCB would accept his claim. He was only able to work four hours a day so if his claim was accepted, the WCB would pay for the hours he could not work. As the sole supporter of his wife and five children, he did not have the resources to go without a full paycheck.

A decision on whether his claim was a new injury requiring a new claim or a recurrence of a previous injury that should be dealt with on a prior claim led to a process delay. The worker informed the Fair Practices Advocate that it made no difference to him and that it seemed to be an issue for the WCB. In the meantime, in an effort to be helpful, an adjudicator advised him to apply for employment insurance benefits. However, at that time, the EI process took an estimated six to eight weeks to complete.

After the worker called us, we pointed out to the managers that from his point of view, the issue was whether the worker had suffered an injury at work and had a loss of earning capacity as a result. If so, he was entitled to wage loss benefits, whatever claim number was used and whatever budget line the money was paid from. We asked, if he is entitled, whether he could be paid first and the details sorted out afterwards.

The WCB managers agreed to take this practical approach. The claim was adjudicated as a new claim, accepted, and paid within four business days of the worker calling the Fair Practices Advocate. It was agreed that if it was decided in the future that the injury was a recurrence, then the claim would be transferred to the previous claim.



FAIR PRACTICES
ADVOCATE

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